UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Northern Maine Independent System Administrator, Inc.	))	**Docket No. ER07-744-000**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE MAINE PUBLIC UTILITIES COMMISSION AND THE MAINE PUBLIC ADVOCATE TO NORTHERN MAINE INDEPENDENT SYSTEM OPERATOR, INC.'s MOTION FOR LEAVE TO FILE ANSWER AND ANSWER

The Maine Public Utilities Commission ("MPUC") and the Maine Public Advocate,[1] pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, hereby respectfully tender for filing this Motion for Leave to Answer and Answer to the May 16, 2007 Motion for Leave to Answer and Answer ("May 16 Answer") filed by Northern Maine Independent System Administrator, Inc. ("NMISA") in response to MPUC's May 4, 2007 Notice of Intervention and Protest ("Protest") regarding NMISA's amendment to the NMISA Tariff and Market Rules filed April 13, 2007 in this proceeding ("April 13 Filing").

I. LEAVE TO FILE ANSWER TO NMISA'S ANSWER

Pursuant to Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2005), the MPUC and Maine Public Advocate request that the Commission accept the MPUC's and Maine Public Advocate's Answer herein. The MPUC's and Maine Public Advocate's Motion

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[1] The Maine Public Advocate filed a Motion to Intervene Out of Time and Comments Supporting the Protest of the MPUC on May 22, 2007. The Maine Public Advocate's intervention has not yet been acted upon by the Commission.

for Leave should be granted and its Answer should be considered since the MPUC's and Maine Public Advocate's Answer aids the Commission in its understanding of the issues presented and the positions taken, and ensures the development of a complete record.[2]

The Commission will allow otherwise unauthorized answers where, as here, an answer provides further explanation or otherwise helps to ensure the existence of a full and complete record and Commission understanding of that record. Although a reply to an answer is not provided for under Rule 213 of the Commission's Rules of Practice and Procedure, the Commission allows such reply where the information provided will facilitate the Commission's decisional process, or aid in the Commission understanding of the issues in the dispute.[3] Similarly, the Commission will consider an otherwise impermissible reply when it enhances or facilitates a full and complete record upon

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[2] *See, e.g., See Arizona Pub. Serv. Co., et al.* 106 FERC ¶ 61,021 at P 9 (2004); *Pacific Gas & Electric Co.*, 93 FERC ¶ 61,322 at 62,103 (2000); *American Transmission Company LLC*, 93 FERC ¶ 61,267 at 61,857 (2000); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at 61,259 (2000); *Commonwealth Edison Co.*, 93 FERC ¶ 61,040 at 61,085 (2000); *Sierra Pacific Power Co. & Nevada Power Co.*, 93 FERC ¶ 61,107 at 61,302 (2000); *California Power Exchange Corp.*, 92 FERC ¶ 61,093 at 61,372 (2000); *Tennessee Gas Pipeline Co.*, 55 FERC ¶ 61,437 at 62,306 n.7 (1991).

[3] *See Egan Hub Partners, L.P.*, 73 FERC ¶ 61,334 at 61,929 (1995) ("Although our rules do not permit answers to answers, we may for good cause, waive this provision. We find good cause to do so in this instance in order to clarify the issues in dispute."); *New York Independent System Operator, Inc., et al.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing otherwise impermissible answer deemed "useful in addressing the issues."); *Central Hudson Gas &* Elect. *Corp. et al.*, 88 FERC ¶ 61,138 at 61,381 (1999) (accepting impermissible answers because they helped to clarify the issues); *Pacific Gas and Elec. Co., et al.* 77 FERC ¶ 61,204 at 61,808 (1996) (allowing impermissible answers that assists in the understanding of the issues raised); *Buckeye Pipe Line Co.*, 45 FERC ¶ 61,046 at 61,160 (1988) (Good cause exists for consideration of prohibited answers where "they help explicate issues that are important to this proceeding . . . ."). *See also Transwestern Pipeline Co.*, 50 FERC ¶ 61,211 at 61,672 n.5 (1990) ("Although answers to protests generally are not allowed by Rule 213 . . . we may waive this prohibition when circumstances warrant, *e.g.* where consideration of matters sought to be addressed in the answer will facilitate the decisional process or aid in the explication of issues.").

which the Commission can base its decision.[4] The Commission also permits such answers where the information provided in the answer assists in the understanding of the parties' positions.[5]

The MPUC's and Maine Public Advocate's Answer assists in the understanding of the parties' positions, especially the claims made by NMISA in its May 16 Answer to the MPUC Protest. Accordingly, the MPUC's and Maine Public Advocate's Motion for Leave to Answer should be granted and their Answer considered by the Commission when it addresses the NMISA's April 13 Filing.

II. ANSWER

A. The NMISA Answer Demonstrates Its Continuing Confusion Over The Requirements Of Northeast Power Coordinating Council ("NPCC") Criteria

At the core of the April 13 Filing and May 16 Answer is NMISA's claim that its proposed capacity requirement is required to be in compliance with Northeast Power Coordinating Council ("NPCC") criteria. Although it references the NPCC Document C-

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[4] *See The New Power Co. v. PJM Interconnection Inc.*, 98 FERC ¶ 61,208 at 61,756 (2002) (allowing otherwise impermissible answers "on the basis that they provide new factual and legal material that helps the Commission in its decision-making process."); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (Noting that Rule 213 "prohibits the filing of an answer to an answer unless otherwise permitted by decision authority" but accepting such an answer that was deemed "helpful in the development of the record."); *Midwest Gas Transmission Co.*, 73 FERC ¶ 61,320 at 61,886 (1995) (finding good cause to allow otherwise impermissible answer "in order to develop a complete record on which to base a decision."); *Williams Natural Gas Co.*, 70 FERC ¶ 61,304 at 61,914 (1995) (allowing otherwise impermissible answer "to achieve a complete and accurate record.").

[5] See *Kansas City Power & Light Co.*, 53 FERC ¶ 61,097 at 61,282 (1990) ("Here, the information set forth in the answers has assisted us in understanding the parties' positions. Accordingly, on this basis and given the absence of any undue prejudice and delay, we will accept all the answers.").

13 criteria, it never supplies the actual language of Document C-13. An examination of Document C-13 makes clear why. The NPCC's Document C-13 criteria does not contain a sub-area capacity obligation. Document C-13, entitled "Operations Planning Coordination," is a document that contains reporting requirements for the control area:

> to ensure that adjacent Areas and neighboring systems are advised on a regular basis of expected operating conditions, including generator, transmission an system protection . . .outages that may materially reduce the ability of an Area to contribute to the reliable operation of the interconnected system, or to receive and/or render assistance to another Area or neighboring system.

NPCC Document C-13, Operations Planning Coordination, at 1.0 (1997).

Thus, Appendix A to Document C-13 sets forth instructions for 18 months projection of load and capacity for the *control area*.[6] The NMISA mistakenly reads these planning criteria as individual Competitive Electricity Provider ("CEP") obligations within sub-areas. An examination of the Document C-13 criteria and a NERC/NPCC capacity assessment[7] makes clear that: (1) Document C-13 is a reporting requirement; and (2) the reporting requirements apply to the *control area*, in this case the Maritimes Control area,

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6 NPCC Document C-13 can be viewed at the following link http://www.npcc.org/publicFiles/reliability/criteriaGuidesProcedures/new/C-13.pdf.

7 The NERC/NPCC winter assessment report filed in Docket No. RM05-30 describes how the NPCC C-13 planning criteria are used by the Maritime Area: "The Maritime Area assesses its seasonal resource adequacy in accordance with NPCC C-13 Operations Planning Coordination procedure. As such, the assessment considers the regional operating reserve criteria, 100% of the largest single contingency and 50% of the second largest contingency." The report also states, "When allowances for unplanned outages (based on a discreet (sic) MW value representing an historical assessment of the forced outages in MW typically realized at the time of peak for the given operating season) are considered, the Maritime Area is projecting more than adequate surplus operating margins above its operating reserve requirements for the winter 2006/2007 assessment period." *Id.* at 23-24.

and not to the Northern Maine sub-area or to each individual CEP. Thus, the NMISA's claim that its proposed capacity obligation is required by the NPCC Document C-13 reporting requirement indicates a clear lack of understanding on NMISA's part of NPCC reliability requirements.

B. The May 16 Answer Confirms That The Existing NMISA Tariff Does Not Authorize NMISA To Impose A Capacity Obligation

1. The Balanced Energy Schedule Has No Capacity Component

NMISA first argues that the balanced schedule requirement is a source of the NMISA's authority. *See* May 16 Answer at 5-6. However, the provisions cited make clear that there is no capacity requirement; rather, there is a requirement for LSEs to secure enough energy to supply actual demand. For example, the Market Rules and NMISA Tariff define Balancing Energy as:

> Energy used to maintain the balance between generation and Demand on an actual basis and to provide Competitive Electricity Providers with the difference between their actual generation and actual Demand, including losses, on an hourly basis.

NMISA Tariff § 1.5, Market Rule § 1.1.9. Similarly, a Balanced Schedule is defined as:

> A schedule for which the sum of the Competitive Electricity Provider's scheduled: energy from Generating Units;; and imports equals the sum of the Competitive Electricity Provider's scheduled: (i) Demand; (ii) allocated share of Transmission Losses; (iii) exports; and (iv) inter ISA energy trades.

Market Rule § 1.1.8.

Finally, the Market Rules include provisions for Settlement of the Balanced Energy Market, but no such Market Rules are provided regarding a capacity requirement. *See* Market Rule § 4.2.1. Mr. Belcher's assertion in his affidavit that the Balanced Schedule obligation requires that each CEP buy capacity as well as energy[8] cannot be

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[8] May 16 Answer, Attachment A at P 9.

substituted for NMISA Tariff language and Market Rules, neither of which contain such a requirement.

2. NMISA's May 16 Answer Fails To Address Its Own Consultant's Observation That There Is No Capacity Requirement Under The NMISA Market Rules

The MPUC Protest to NMISA's April 13 Filing quoted NMISA's own consultant, William Dunn, who provided a history of the NMISA market design. *See* MPUC Protest to April 13 Filing at 5-7 and Attachment A. Mr. Dunn points out in his analysis to Ken Belcher, the President of the NMISA, that the NMISA Board of Directors decided to eliminate a proposed Installed Capacity Market prior to filing for initial FERC approval. *See id.* at 6. He further goes on to compare Installed Capability Requirements with Balanced Schedule Designs. *See id.* "Assuming that reliance on energy prices (capped or uncapped) is not an acceptable approach to ensuring that capacity is developed in time to meet growing needs, one way to encourage the development of capacity is through imposition of an ICAP *obligation* and creation of a market for ICAP." *Id.,* Attachment A at 11 (emphasis added). However, Mr. Dunn pointed out that given extensive litigation in ISO-NE and PJM over the appropriate capacity structure, *a* capacity requirement may be even more difficult to develop in Northern Maine: "it has become even more difficult to bring together all the issues associated with *capacity requirements* in Northern Maine, including the fact that Northern Maine has transmission risks that may be greater than its generation risks." *Id.,* Attachment A at 13 (emphasis added).

Finally, although NMISA relies on one statement from Mr. Dunn as an indication that the balanced schedule imposes a capacity requirement, that reliance is misplaced.

The statement,[9] in fact, taken in the context of the rest of the letter, supports the opposite conclusion. Mr. Dunn's description of the balancing requirement makes very clear that it is an energy, not a capacity requirement.[10] The Balanced Schedule requirement thus *is* a proxy for a capacity requirement because it ensures that if the energy needed to supply load is not provided by the CEP, it will be supplied from another source—*at a cost.* A capacity requirement accomplishes the same result by ensuring that the unit that will supply the energy is available.

These statements from the NMISA's consultant, Mr. Dunn, to the President of the NMISA, respecting the concerns raised by the MPUC, further drives home the obvious point that there is neither a capacity market nor a *capacity requirement* in place under the existing Market Rules. Accordingly, NMISA's May 16 Answer fails to address its own consultant's observation that the existing Market Rules does not contain a capacity obligation (and that were an obligation to be considered, there would be numerous difficult issues to address).

In addition to the plain language of the NMISA Tariff and Market Rules and Mr. Dunn's observations, the NMISA's initial tariff filing in August of 1999 ("August 1999

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9 The statement relied on by NMISA is as follows "there is no formal capacity market in Northern Maine, but that there are three criteria in the market that serve as a "proxy" for such a capacity market: Balanced Schedules, the eighteen month NPCC Load and Capacity Assessment Criteria, and the fact that purchases from New Brunswick must obtain capacity pursuant to the New Brunswick market rules." *See id,* Attachment A at 14.

10 *See id.,* Attachment A at 14. ("In real time, NMISA operates a centralized Balancing Energy Market to reconcile differences in each hour between each CEP's final Balanced Schedule and the CEP's actual production and consumption. Penalties can be imposed for excessive leaning on the real-time Balancing Energy Market.")

Filing")[11] also makes clear that balancing energy meant "energy" and not "capacity." In its August 1999 Filing, NMISA made clear that it would charge rates for two kinds of services: (1) the NMISA's administration and monitoring services; and (2) those services which the NMISA purchases and resells to Northern Maine Market Participants. *See id.,* Transmittal Letter at 13. The first category of rates is not at issue in this proceeding. The second category of rates, services purchased and resold to market participants, included ancillary services (which do not include capacity) and Balancing Energy. In describing the Balancing Energy requirement, the August 1999 Filing quotes the definition for Balancing Energy, and then describes how it works:

> Market Participants which, in a given hour, have not acquired enough *energy* to meet their requirements will be deemed to have purchased *Balancing Energy in an amount equal to the difference between the energy actually scheduled to its demand in that hour and its actual energy demand in that hour. Similarly, Market Participants which, in a given hour, have acquired too much energy to meet their requirements will be deemed to have sold balancing Energy in an amount equal to the difference between the energy actually scheduled to its demand in that hour and its actual energy demand in that hour.*

Id., Transmittal Letter at 15 (emphasis added). Again, there is no mention of a capacity requirement. And, the description of the "Balanced Schedule" makes clear that additional *energy* purchases will be made to ensure a Balanced Schedule.

In short, all of the evidence provided to date makes clear that the rules require only a balanced *energy* requirement, and not, as NMISA asserts, a capacity obligation. Thus, the Commission should reject NMISA's assertion that "the NMISA has always had

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[11] Northern Maine Independent System Administrator, Docket No. ER99-4225-000, August 25, 1999.

that authority [to impose a capacity requirement on CEPs] and has always enforced the capacity obligations." May 16 Answer at 4.

C. The NMISA's Obligation To Ensure That the Northern Maine Region Complies With NERC And NPCC Standards Does Not Give The NMISA Authority To Impose A Capacity Obligation

1. Section 4.9 Of The NMISA Tariff Does Not Give The NMISA Authority To Impose A Capacity Obligation

Section 4.9 of the NMISA Tariff gives the NMISA the authority and obligation to propose *market rules* to prescribe reliability standards consistent with NERC and NPCC standards. This provision also states that, consistent with the NMISA Tariff and the Market Rules, the NMISA is required to "monitor" reliability using the applicable reliability standards and, "to the extent authorized" under the NMISA Tariff, the NMISA is to ensure that Northern Maine Transmission System has, at all times, adequate transmission and generation capacity to satisfy such standards. This provision does nothing more than state that the NMISA has the obligation to *propose* market rules to ensure compliance with reliability standards and to act *within its market rule and tariff authority* to ensure reliability. This provision does not grant a source of separate authority.

2. Neither Market Rule 8.9.1 Nor 8.9.3 Give The NMISA The Authority To Impose A Capacity Obligation

Market Rules 8.9.1 and 8.9.3 simply provide standards for system planning. As is clear from the NERC reliability materials and Mr. Dunn's letter to the President of the NMISA attached to the MPUC's Protest to the April 13 Filing, imposing a capacity obligation is one mechanism that can be used to meet the NERC and NPCC standards. Clearly, it is not the only mechanism. The tool currently employed pursuant to the

Market Rules to meet the NERC and NPCC standards is the Balancing Energy requirement, not a capacity obligation.

D. NMISA'S Actions Against Integrys Demonstrate The Folly Of NMISA's Claim To Have Authority That Is Nowhere Delineated in The NMISA Tariff Or Market Rules

NMISA claims that it made the April 13 Filing because Integrys disputed its authority to require it to purchase "adequate generating capacity."

> NMISA informed then WPS-ESI [now Integrys] that its energy-only purchases did not meet the Balanced Schedule obligations pursuant to the Market Rules. WPS-ESI responded by claiming that the Northern Maine Market Rules lacked a capacity obligation and that the energy-only purchases qualified to meet their Balanced Schedule requirement. As a result, the NMISA market did not have enough capacity to meet its NPCC capacity obligation during the fall 2006 scheduled outages. Despite repeated requests by the NMISA, WPS-SEI refused to provide the *required capacity* to back the energy during the scheduled outages to cure this deficiency. To cure the deficiency, the NMISA, exercising its authority under its Tariff and Market Rules, purchased the required capacity, and invoiced Integrys for the cost of the capacity.

May 16 Answer at 9 and Attachment A, Belcher Affidavit at P 12. The above-quoted passage makes clear that the NMISA was acting on its own interpretation of what the NPCC required, rather than the provisions of the Market Rules and NMISA Tariff. In fact, as discussed in the MPUC Protest to the April 13 Filing, the existing energy-only balancing obligation is understood by NPCC, and there is no indication that it has any concern with this structure, especially where the NMISA area is such a small sub-area within the larger Maritimes Control area. *See* MPUC Protest to April 13 Filing at 9-10. Moreover, the NMISA's discussion makes clear that it was the NMISA's own judgment, not the language of the Market Rules, the NMISA Tariff or from the NPCC, that not purchasing capacity "threatened to materially impair reliability." May 16 Answer at 9.

The Commission has consistently found that ISO authority must be clearly delineated. Thus, in *New York System Administrator*, 102 FERC ¶ 61,313 (2003), the Commission rejected proposed tariff provisions which made certain demand resources eligible to set the clearing price because the mechanism for doing so had not yet been developed. In *New York System Administrator*, the Commission found that the proposal, because it had not yet been developed, "is inconsistent with Section 205 of the FPA which requires public utilities, including system operators, to file with the Commission prior to implementation, practices and regulations that govern how jurisdictional rates will be determined." *Id.* at P 26.[12] Accordingly, the Commission required the NYISO to delete this provision, which the NYISO could then re-file when it filed the specific procedures in question.

The NMISA's reliance on its own judgment about obligations it should impose to ensure reliability cannot be reconciled with the Commission's concern that the scope of the system operator's authority and the standards upon which it will impose sanctions must be thoroughly delineated.[13] The Commission's insistence that obligations and sanctionable behavior be fully set forth in the Market Rules protects against just the circumstances of this case in which a CEP is threatened with sanctions if it does not

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12 *See also, Mirant Americas Energy Marketing, L.P.*, 96 FERC ¶ 61,201 at 61,860 (2001). ("ISOs (and ISO-NE is no exception) must file with the Commission *all practices and regulations affecting jurisdictional rates and services.*") (emphasis added).

13 *See, e.g., New York Independent System Operator*, 89 FERC ¶ 61,196 at 61,605 (1999) (rejecting proposals that would allow the NYISO to: (1) reduce bid flexibility, (2) impose financial obligations to pay for operating reserves, or (3) impose default bids, because these proposals "give too much discretion to the ISO in price-setting and other similar regulatory functions without Commission review.")

comply with an administrator's orders, even though the order imposes an obligation that is nowhere to be found in the Market Rules.

E. Because, Contrary To NMISA's Claims, The April 13 Filing Does Change The Obligations Of CEPs, It Is A Change In Rates

The NMISA asserts in its April 13 Filing that "[n]o rates will be affected as a result of this filing" (April 13 Filing, Transmittal Letter at 1) because the "April 13 Filing did not change any capacity obligations or requirements." May 16 Answer at 10. As discussed above, however, this claim is wholly unsupported by the language of the NMISA Tariff or the Market Rules. Moreover, the Petition of Integrys Energy Services, appended to the MPUC protest as Exhibit 1 to Attachment B ("Petition"), makes clear that the capacity obligation which the NMISA began imposing in October 2006 and for which it now seeks authorization has a significant cost associated with it. *See id.* at 4 (NMISA charged Integrys $63,250 for 23 MW of capacity purchased for the month of November). Further, the Petition makes clear that the proposed capacity obligation will continue to impose costs on Integrys which it is in turn seeking to recover from its standard offer customers. Thus, the NMISA claim that there is no rate impact associated with the proposed capacity obligation is simply false.

Moreover, NMISA's claim that FERC should ignore the impact of the proposed capacity obligation on the rates of market participants and the ultimate consumer indicates not only a misunderstanding of the role that FERC plays in determining whether a rate is just and reasonable, but a complete indifference to the effect of its actions upon Northern Maine ratepayers. The NMISA's arguments in this regard do not merit further discussion.

F. The NMISA's Answer Fails To Address The Substance Of MPUC's Jurisdictional Argument

The NMISA appears to argue that because it believes there has always been a capacity obligation in the NMISA market rules, the MPUC "has no authority to dictate the terms of the NMISA's FERC filed rate schedules." May 16 Answer at 11. This argument is flawed in two respects. First, its assumption that the capacity obligation is already the filed rate, is, as discussed above, wholly unsupported by the existing Market Rules and NMISA Tariff. Second, simply because the NMISA is regulated by FERC, it does not necessarily follow that any rate filed by it at FERC is FERC jurisdictional. In fact, FERC itself abandoned this argument on appeal of its jurisdiction over the appropriate level of installed capacity which would dictate how much capacity LSEs would be required to purchase. *See Connecticut Department of Public Utility Control v. FERC*, 2007 U.S. App. LEXIS 9119 (April 20, 2007).

G. The MPUC Has Demonstrated That The Capacity Proposal Is Flawed, And This Demonstration Remains Uncontested

In Attachment C of the MPUC Protest to the April 13 Filing, Dr. Thomas Austin pointed out the flaws in the NMISA proposal to impose a capacity obligation. For example, Dr. Austin pointed out that the proposed Market Rules neither define the capacity product, nor the rights and obligations of capacity providers and buyers. *See* MPUC Protest to April 13 Filing, Attachment C at P 8. Similarly, Dr. Austin pointed out how some of the flaws that exist in the proposed rule led to a dysfunctional capacity construct in New England. *See id.* The May 16 Answer failed to contest the MPUC's discussion of the flaws in the proposed capacity obligation.

III. CONCLUSION

The MPUC and Maine Public Advocate request that if the Commission accepts NMISA's May 16, 2007 Answer, the Commission should also grant the MPUC's and Maine Public Advocate's Motion for Leave to File Answer and Answer as it will assist the Commission in resolving issues pertaining to NMISA's proposed amendment to the NMISA Tariff and Market Rules. Further, for the reasons set forth in the MPUC protest and this Answer, the MPUC and Maine Public Advocate respectfully request that the NMISA April 13, 2007 filing be rejected.

Dated: May 31, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 31st day of May, 2007.

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